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SENATE BILL**No. 551**

Introduced by Senator Lowenthal

February 18, 2005

An act to amend Section 1373 of, to add Section 1363.7 to, and to add Chapter 11 (commencing with Section 1380.010) to Title 6 of Part 4 of Division 2 of the Civil Code, relating to common interest developments, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 551, as amended, Lowenthal. Common interest developments: ombudsperson.

Existing law defines and regulates common interest developments, which include condominiums and planned developments. Existing law requires that a common interest development be managed by an association, and establishes requirements for association operating rules and meetings and for the resolution of specified disputes.

This bill would, until January 1, 2011, establish in the Department of Consumer Affairs, the Office of the Common Interest Development Ombudsperson. The bill would require the ombudsperson to, among other things, offer training materials and courses to common interest development directors, officers, and owners, in subjects relevant to the

operation of a common interest development and the rights and duties of an association or owner. The bill would require the ombudsperson to maintain a toll-free telephone number and Internet Web site for purposes of further providing that information and assistance, and would require an association director or agent to meet certain requirements in that regard. The bill would impose a biennial association fee on common interest development associations to fund the administration of the provisions of the bill, for deposit in a newly created fund, the Fee Account of the Common Interest Development Ombudsperson Fund, *which would be subject to appropriation by the Legislature.* ~~Because the funds in that account would be continuously appropriated, the bill would make an appropriation.~~

Vote: majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1363.7 is added to the Civil Code, to
- 2 read:
- 3 1363.7. An association shall provide its members with annual
- 4 written notice of the Internet Web site address and toll-free
- 5 telephone number of the Common Interest Development
- 6 Ombudsperson established pursuant to Chapter 11 (commencing
- 7 with Section 1380.010).
- 8 SEC. 2. Section 1373 of the Civil Code is amended to read:
- 9 1373. (a) The following provisions do not apply to a common
- 10 interest development that is limited to industrial or commercial
- 11 uses by zoning or by a declaration of covenants, conditions, and
- 12 restrictions that has been recorded in the official records of each
- 13 county in which the common interest development is located:
- 14 (1) Section 1356.
- 15 (2) Article 4 (commencing with Section 1357.100) of Chapter
- 16 2.
- 17 (3) Subdivision (b) of Section 1363.
- 18 (4) Section 1365.
- 19 (5) Section 1365.5.
- 20 (6) Subdivision (b) of Section 1366.
- 21 (7) Section 1366.1.
- 22 (8) Section 1368.
- 23 (9) Section 1378.

1 (10) Chapter 11 (commencing with Section 1380.010).

2 (b) The Legislature finds that the provisions listed in subdivision
3 (a) are appropriate to protect purchasers in residential common
4 interest developments, however, the provisions may not be
5 necessary to protect purchasers in commercial or industrial
6 developments since the application of those provisions could result
7 in unnecessary burdens and costs for these types of developments.

8 SEC. 3. Chapter 11 (commencing with Section 1380.010) is
9 added to Title 6 of Part 4 of Division 2 of the Civil Code, to read:

10
11 CHAPTER 11. COMMON INTEREST DEVELOPMENT
12 OMBUDSPERSON PILOT PROJECT
13

14 Article 1. Definitions
15

16 1380.010. Unless the provision or context otherwise requires,
17 the definitions in this article govern the construction of this chapter.

18 1380.020. “Owner” means the owner of a separate interest.

19 1380.030. “Person” includes a natural person, firm, association,
20 organization, partnership, business trust, corporation, limited
21 liability company, or public entity.
22

23 Article 2. Administration
24

25 1380.100. The Legislature finds and declares all of the
26 following:

27 (a) There are more than 36,000 residential common interest
28 developments in California, comprising more than 3,000,000
29 dwellings. Common interest developments comprise approximately
30 one-quarter of the state’s housing stock.

31 (b) Managing a common interest development is a complex
32 responsibility. Community associations are run by volunteer
33 directors who may have little or no prior experience in managing
34 real property, operating a nonprofit association or corporation,
35 complying with the law governing common interest developments,
36 and interpreting and enforcing restrictions and rules imposed by
37 the governing documents of the common interest development.
38 Homeowners may not fully understand their rights and obligations
39 under the law and the governing documents. Mistakes and
40 misunderstandings are inevitable and may lead to serious, costly,

1 and divisive problems. The Common Interest Development
2 Ombudsperson seeks to educate community association officers
3 and homeowners as to their legal rights and obligations. Effective
4 education can prevent or reduce the severity of problems within a
5 common interest development.

6 (c) The principal remedy for a violation of common interest
7 development law is private litigation. Litigation is not an ideal
8 remedy for many common interest development disputes, where
9 the disputants are neighbors who must maintain ongoing
10 relationships. The adversarial nature of litigation can disrupt these
11 relationships, creating animosity that degrades the quality of life
12 within the community and makes future disputes more likely to
13 arise. Litigation imposes costs on a common interest development
14 community as a whole, costs that must be paid by all members
15 through increased assessments. Many homeowners cannot afford
16 to bring a lawsuit and are effectively denied the benefit of laws
17 designed for their protection.

18 (d) Anecdotal accounts of abuses within common interest
19 developments create continuing public demand for reform of
20 common interest development law. This results in frequent changes
21 to the law, making it more difficult to understand and apply and
22 imposing significant transitional costs on common interest
23 developments statewide. By collecting empirical data on the nature
24 and incidence of problems within common interest developments,
25 the Common Interest Development Ombudsperson provides a
26 sound basis for prioritizing reform efforts, thereby increasing the
27 stability of common interest development law.

28 (e) The costs of the Common Interest Development
29 Ombudsperson Pilot Project shall be borne entirely by common
30 interest development homeowners, through imposition of a biennial
31 fee.

32 1380.110. (a) There is in the Department of Consumer Affairs
33 the Office of the Common Interest Development Ombudsperson,
34 under the supervision and control of the Director of Consumer
35 Affairs.

36 (b) The Director of Consumer Affairs shall employ a Common
37 Interest Development Ombudsperson and other officers and
38 employees as necessary to discharge the requirements of this
39 chapter. The Common Interest Development Ombudsperson shall
40 have the powers delegated by the director.

1 (c) The ombudsperson shall adopt rules governing practices and
2 procedures under this chapter. Any rule adopted under this
3 subdivision is subject to the rulemaking provisions of the
4 Administrative Procedure Act (Chapter 3.5 (commencing with
5 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
6 Code).

7 (d) Information and advice provided by the ombudsperson has
8 no binding legal effect and is not subject to the rulemaking
9 provisions of the Administrative Procedure Act (Chapter 3.5
10 (commencing with Section 11340) of Part 1 of Division 3 of Title
11 2 of the Government Code).

12 (e) The ombudsperson may convene an advisory committee to
13 make recommendations on matters within the ombudsperson's
14 jurisdiction. A member of an advisory committee ~~shall~~ *may* receive
15 per diem and expenses pursuant to Section 103 of the Business
16 and Professions Code. In selecting the members of an advisory
17 committee, the ombudsperson shall ensure a fair representation of
18 the interests involved.

19 1380.120. The Common Interest Development Ombudsperson
20 shall report annually to the Legislature, no later than October 1 of
21 each year. The report shall include all of the following information:

22 (a) Annual workload and performance data, including the
23 number of requests for assistance received, the manner in which
24 a request was or was not resolved, and the staff time required to
25 resolve the inquiry. For each category of data, the ombudsperson
26 shall provide subtotals based on the type of question or dispute
27 involved in the request.

28 (b) Analysis of the most common and serious types of disputes
29 within common interest developments, along with any
30 recommendations for statutory reform to reduce the frequency or
31 severity of those disputes.

32 (c) On or before January 1, 2009, the ombudsperson shall submit
33 recommendations to the Legislature on the following topics:

34 (1) Whether the ombudsperson should be authorized to enforce
35 common interest development law.

36 (2) Whether the ombudsperson should be authorized to oversee
37 association elections.

38 (3) Whether the scope of application of Section 1380.230 should
39 be narrowed or broadened.

1 1380.130. (a) On filing information with the Secretary of State
2 every two years, pursuant to subdivision (a) of Section 1363.6, an
3 association shall submit a Common Interest Development
4 Ombudsperson Fee. This fee is in addition to the fee submitted
5 pursuant to Section 1363.6. Failure to submit the Common Interest
6 Development Ombudsperson Fee is deemed noncompliance with
7 Section 1363.6.

8 (b) The Common Interest Development Ombudsperson Fee
9 shall equal the number of separate interests within the association
10 multiplied by the biennial fee amount. The initial biennial fee
11 amount is ten dollars (\$10). *For the purposes of this section,*
12 *“separate interest” has the meaning provided in Section 1351.*

13 (c) An association is excused from paying the fee for a separate
14 interest if another association has paid the fee for that separate
15 interest. An association that is excused from paying the fee for a
16 separate interest shall certify, on a form developed by the Secretary
17 of State for that purpose, that another association has paid the fee
18 for that separate interest. The ombudsperson may adopt, by
19 regulation, a rule governing which association is required to pay
20 the fee for a separate interest that is part of more than one
21 association.

22 (d) The Common Interest Development Ombudsperson shall
23 increase or decrease the biennial fee amount every two years to
24 provide only the revenue that it estimates will be necessary for its
25 operation during the next two-year period. The biennial fee amount
26 shall not exceed twenty dollars (\$20).

27 (e) An assessment increase necessary to recover the fee imposed
28 by this section shall not be included in any calculation for purposes
29 of subdivision (b) of Section 1366.

30 1380.140. Common Interest Development Ombudsperson fee
31 revenue received by the Secretary of State and fee revenue received
32 by the Common Interest Development Ombudsperson shall be
33 transferred to the State Treasurer and placed in the Fee Account
34 of the Common Interest Development Ombudsperson Fund, which
35 is hereby created. All funds in the Fee Account of the Common
36 Interest Development Ombudsperson Fund ~~are continuously~~
37 ~~appropriated to the ombudsperson, to be used~~ *shall be used*
38 exclusively for expenditures necessary for the proper administration
39 of this chapter, *upon appropriation by the Legislature.*

1 1380.150. (a) This chapter shall remain in effect only until
2 January 1, 2011, and as of that date is repealed, unless a later
3 enacted statute that is enacted before January 1, 2011, deletes or
4 extends that date.

5 (b) The Common Interest Development Ombudsperson Pilot
6 Project is subject to review by the Joint Committee on Boards,
7 Commissions, and Consumer Protection pursuant to Division 1.2
8 (commencing with Section 473) of the Business and Professions
9 Code.

10
11 Article 3. Education
12

13 1380.200. (a) The Common Interest Development
14 Ombudsperson shall offer training materials and courses to
15 common interest development directors, officers, and owners, in
16 subjects relevant to the operation of a common interest
17 development and the rights and duties of an association or owner.

18 (b) The ombudsperson may charge a fee for training materials
19 or courses, not to exceed their actual cost.

20 1380.210. The Common Interest Development Ombudsperson
21 shall maintain a toll-free telephone number to provide information
22 or assistance on matters relating to common interest developments.

23 1380.220. (a) The Common Interest Development
24 Ombudsperson shall maintain an Internet Web site, which shall
25 provide all of the following information:

26 (1) The text of this title, the Nonprofit Mutual Benefit
27 Corporation Law (Part 3 (commencing with Section 7110) of
28 Division 2 of Title 1 of the Corporations Code), and any other
29 statute or regulation that the ombudsperson determines would be
30 relevant to the operation of a common interest development or the
31 rights and duties of an association or owner.

32 (2) Information concerning nonjudicial resolution of disputes
33 that may arise within a common interest development, including
34 contacts for locally available dispute resolution programs organized
35 pursuant to Chapter 8 (commencing with Section 465) of Division
36 1 of the Business and Professions Code.

37 (3) A description of the services provided by the ombudsperson
38 and information on how to contact the ombudsperson for assistance.

39 (4) An analysis, prepared each year, of legislative changes to
40 common interest development law.

1 (5) Any other information that the ombudsperson determines
2 would be useful to an association or owner.

3 (b) Information provided on the ombudsperson's Internet Web
4 site shall also be made available in printed form. The
5 ombudsperson may charge a fee for the purchase of printed
6 material, not to exceed the actual cost of printing and delivery.

7 1380.230. (a) Within 60 days of assuming office as an
8 association director or providing services as a managing agent, an
9 association director or managing agent shall certify that the director
10 or managing agent has read each of the following:

11 (1) The declaration, articles of incorporation or association, and
12 bylaws of the association that the director or managing agent
13 serves.

14 (2) This title or, if the Common Interest Development
15 Ombudsperson prepares a detailed summary of the requirements
16 of this title, that summary.

17 (b) A director shall file the certification required by this section
18 with the ombudsperson. A managing agent shall file the
19 certification required by this section with the association served
20 by that managing agent.

21 (c) For the purposes of this section, "managing agent" means a
22 person or entity who, for compensation or in expectation of
23 compensation, exercises control over the assets of a common
24 interest development. "Managing agent" does not include a
25 regulated financial institution operating within the normal course
26 of its regulated business practice.